

Support for Paid Sick Leave and Family Leave Policies

Relationship to Existing APHA Policies

APHA Policy Statement 20001 – Expanded Family and Medical Leave

APHA Policy Statement 20063 – Preparing for Pandemic Influenza¹

Abstract

The United States falls far behind other developed countries with respect to paid leave for illnesses or to care for a family member. Approximately 40% of private-sector workers in the United States do not have paid sick leave, and the disparity is more pronounced among those employed in low-wage jobs. Lack of paid sick leave can have substantial adverse consequences for public health, including the spread of infectious disease. During the 2009–2010 H1N1 pandemic alone, an estimated 7 million additional individuals were infected and 1,500 deaths occurred because contagious employees did not stay home from work to recover. In addition to inadequate paid sick leave policies, only 11% of US workers are employed in firms that offer paid family leave. Today, more than 65 million US residents serve as unpaid family caregivers to an adult or a child. Unpaid leave benefits provided by the 1993 federal Family and Medical Leave Act (FMLA) apply, however, to less than 60% of US workers because employers with fewer than 50 employees are exempt from the law. The FMLA should be enhanced to include provisions for paid leave and cover a larger share of the US workforce. The definition of “immediate family” should be expanded as well. Laws should be passed at the city, state, and/or federal level requiring all employers to allow employees to accrue paid sick leave and use it to care for themselves, a family member, or a designated person with a familial-type relationship.

Problem Statement

The failure of the United States to ensure paid sick and family leave for all US workers harms individual workers and the public’s health. Low-income families disproportionately bear the economic hardship and negative health impacts of this policy failure.

Lack of paid sick leave: Individuals without paid sick leave are forced to make a choice every time they are ill: stay home to recover or go to work because they cannot afford a smaller paycheck. Given this choice, many US workers decide to work while they are sick. As a result, they compromise their health as well as the wellness of those they encounter at work, on transportation systems, and elsewhere in their community.

The United States is the only developed country that does not require employers to provide paid sick leave.² Nearly 40% of the country’s private-sector workers do not have paid sick leave.³ Moreover, the portion of workers without paid sick leave is much higher in certain industries and occupations. Among private-sector workers earning wages in the lowest 25th percentile, only 29% are offered paid sick leave from their employers.³ Individuals in lower socioeconomic groups and those without health insurance, factors directly associated with employment policies, are much less likely to have paid sick leave.^{4–8}

An evaluation of sick leave policies in 22 countries revealed that the United States was one of only three countries that had no national policy requiring employers to provide at least 5 paid sick days for workers to recover from influenza. The United States is the only country that does not provide paid sick leave for a worker undergoing a 50-day cancer treatment.⁹

Lack of paid sick leave can have substantial adverse consequences for public health, including the spread of infectious disease and obstacles to preventive care. In a national survey of more than 4,300 restaurant workers, 88% of them reported not having paid sick leave. Consequently, 63% admitted that they cooked and served food while sick.¹⁰

The US Centers for Disease Control and Prevention (CDC) estimated the number of additional cases of illness during the 2009–2010 H1N1 pandemic associated with contagious individuals who did not stay home from work to recover. Infected employees who reported to work are estimated to have caused the infection of an additional 7 million people¹¹ and 1,500 deaths.¹² Following the 2009 H1N1 pandemic, researchers interviewed a nationally representative sample of US adults to assess social determinants of potential exposure to the virus. Workplace policies such as lack of paid sick leave were correlated with a higher incidence of influenza-like illness. The

authors estimated a population-attributable risk of 5 million additional cases of influenza-like illness in the US population owing to the absence of workplace policies such as paid sick leave.¹³ A study that modeled influenza epidemic scenarios showed that universal paid sick days reduced workplace infections by 6%.¹⁴

Social distancing, a measure to limit contact between infected and susceptible individuals, is one measure recommended to reduce influenza transmission. Both the World Health Organization's and CDC's influenza pandemic preparedness guidance documents identify social distancing as a way to reduce disease incidence.^{15,16} Employment policies, such as access to paid sick leave, will enhance or impede the efficacy of social distancing strategies. Staying home and forgoing a day or more's pay is not feasible for many individuals, especially those in low-wage occupations or insecure employment situations. Risk of wage loss, termination, and other job security concerns will limit the practicality of personal quarantine measures.¹⁷ APHA policy 20063 (Preparing for Pandemic Influenza) recognizes the need for employment policies that provide individuals with financial security to enable them to stay at home when they or a family member are sick.¹

Lack of paid sick leave may also be an obstacle to public health goals such as preventive care services and interventions. An analysis of data from the 2008 National Health Interview Survey revealed a statistically significant difference according to sick leave status between groups of US female workers undergoing mammography and Pap testing at the recommended time intervals. The percentage of workers seeking these services, after control for sociodemographic and health care-related factors, was significantly higher among workers with paid sick leave.¹⁸ These workers were also more likely to have had at least one visit to a health care provider during the previous 12-month period.¹⁸ In a nationally representative study of 1,963 full-time and part-time employees, only 56% reported being able to take paid time off to see a doctor.¹⁹

Differences also exist in use of outpatient versus emergency room services depending on workers' access to sick leave. One study showed that, among US workers with health insurance, access to paid sick day benefits was significantly associated with increased use of outpatient care and reduced use of emergency care.⁴ Moreover, employers' adoption of paid sick leave policies may reduce workplace injuries. According to CDC researchers, workers with paid sick days are 28% less likely to be injured at work.²⁰

Lack of paid and unpaid family leave policies: Major health-related life events in a family, such as pregnancy, birth or adoption of a child, diagnosis of a life-threatening disease, a serious injury leading to lengthy rehabilitation, or the death of a family member, constitute significant sources of physical, emotional, and financial stress. Managing these life events while also meeting responsibilities at work can take its toll on a person's health.²¹ Paid family leave would alleviate tensions between competing work and family responsibilities.²²⁻²⁴

Maternity leave is one of the most studied forms of employment leave, and, depending on its duration, it is associated with a variety of public health benefits.^{25,26} These benefits include prolonged gestation and reductions in cesarean deliveries,²⁷ more well-baby visits,²⁸ decreased infant mortality,^{29,30} longer periods of breastfeeding,³¹⁻³⁴ and improved mental health of new mothers.^{26,35} In some studies, these positive effects are identified only when the maternity leave is paid.^{28,29,33-36}

The importance of parental care for ill or injured children has been reported for decades.³⁷ The public health benefits include improved pediatric medical and surgical experiences³⁸⁻⁴² and better management of chronic diseases.⁴³⁻⁴⁵

The United States is currently the only industrialized country in the world without paid maternity leave, although some states have laws granting it.⁴⁶ Maternity leave is particularly important to allow a woman to recover from childbirth and care for her newborn, including breastfeeding. Lack of paid maternity leave could perpetuate inequities among lower income women who cannot afford unpaid time off. Women with children who have paid leave are less likely to require public assistance, and they have higher wages the following year.⁴⁷ Census data show that in 2006-2008, 45% of women who worked during their first pregnancy had paid leave after delivery, while 37% had unpaid leave. Six percent quit their job, 8% had disability leave, 3% were let go from their job, and 6% had other leave (the total exceeds 100% owing to multiple responses).⁴⁸

An estimated 65.7 million US residents serve as unpaid family caregivers to an adult or a child with special needs.⁴⁹ Caregivers have a mean age of 48 years and are predominantly female (66%), and 73% were employed at some time while caregiving.⁴⁹ About one-third of caregivers report their situation to be highly stressful.⁴⁹ Only 11% of US workers, however, are employed in firms that offer paid family leave.⁵⁰ Unpaid leave benefits provided by the 1993 federal Family and Medical Leave Act (FMLA) are available to fewer than 60% of workers^[51] because the law extends only to employers with 50 or more employees. Under the FMLA, employees must have at least 12 months of service with the firm and must have worked at least 1,250 hours over the past 12 months (e.g., 24 hours per week) to be eligible for unpaid leave.⁵²

Data from the US Department of Labor indicate that workers covered by and eligible for FMLA benefits are more likely to be more advantaged than other workers.⁵³ About three-quarters of them identify themselves as White non-Hispanic and have significantly more annual family income than non-eligible and non-covered workers. In addition, they are significantly more likely to have graduated from college (27%) or to have attended graduate school (13.2%).⁵⁴ Other researchers have reported similar results. Access to paid leave has been shown to be lower in low-income families and among families in which the parents work for small employers.^{8,55} Moreover, the FMLA can be used only to care for family members with "major illnesses," and working parents report that it does not help them address the majority of their children's sick care needs.⁵⁶ More than 48% of children in the United States are from households in which both parents work full time. In 1988, the figure was 39%.⁵⁷ Parents in many families are unable to care for a sick child without missing work and pay.⁶

A 2009 analysis of the 22 nations ranked highest on the United Nations' Human Development Index revealed that the United States is the only country that does not require employers to provide paid sick leave. Five countries mandate that employers cover workers' wages when they are out sick, 5 countries have social insurance systems wherein sick pay is funded by tax revenues, and the remaining nations have a combination of employer mandates and social insurance. These countries' policies also distinguish benefits depending on the nature of the illness, from a short-term bout with influenza to longer-term treatment for an illness (e.g., cancer). Eligibility requirements differ among countries: in Finland, the worker must have at least 1 month of job tenure; in Greece, the worker must have 1 year of service; and in the United Kingdom, Australia, and 5 other countries, there is no minimum tenure requirement. The sickness pay benefit (e.g., 100% of typical wage, flat rate) and waiting period to apply for the benefit also differ among countries.⁹

The United States lags behind in parental leave as well. A 2009 assessment by the United Nations' International Labour Organization (ILO) showed that the United States was one of only 5 countries of 167 studied that did not have some form of paid maternity leave;⁵⁸ in 2010, Australia passed a new parental leave law and left the United States as the only industrialized nation that does not provide paid leave to parents of a newborn.⁵⁹ A mother or father in the United States who is employed at a business with 50 or more employees may be eligible under the federal Family and Medical Leave Act for up to 12 weeks of unpaid leave.⁴⁷ The ILO assessment noted that 53% of the countries with paid leave policies financed the benefit through a social security program, while 17% relied on a mix of employer and social security funding. It also reported on paid paternity leave policies in 48 countries, ranging from 2 days for new fathers in Guatemala and Paraguay to 10 days in Latvia, Belgium, and Sweden and 3 months in Iceland.⁵⁸

Proposed Recommendations Statement

Recommendations for paid sick leave policies: San Francisco's 2006 paid sick leave law is a good model for city/county, state, and federal legislation. It requires all employers to offer paid sick leave, which workers can use to care for themselves or a family member. The list of persons for whom an employee can care while using paid sick leave is extensive, including children, parents, siblings, grandparents, and grandchildren of relationships resulting from adoption, step-relationships, and foster care relationships (as well as biological relationships); an employee without a spouse or domestic partner can designate a person for whom the employee can care while using sick time. After a 90-day probationary period, employees accrue 1 day of paid leave for each 30 hours worked; employers with fewer than 10 employees must provide at least 40 hours per year, and those with 10 or more employees must provide 72.⁶⁰

Connecticut,⁶¹ the District of Columbia,⁶² Jersey City,⁶³ New York City,^{64,65} Portland,^{66,67} and Seattle⁶⁸ have also passed laws requiring employers to offer paid sick leave, although they do not cover all employer sizes or industry sectors. The laws in Connecticut, the District of Columbia, Portland, and Seattle, in addition to granting employees paid leave for medical needs, allow paid leave to be used to recover from or seek assistance related to domestic violence, sexual assault, or stalking.^{61,62,67,68} One element in the New York, Portland, and Seattle laws that should be a model for future laws is the provision that accrued time may be used to care for a child whose school or place of care is closed as a result of a public health emergency.^{65,67,68}

Compelling evidence of the effectiveness of paid sick leave laws comes from a health impact assessment conducted in association with the federal Healthy Families Act of 2009, which would have required employers with 15 or more workers to allow employees to earn up to 56 hours of paid sick leave annually, and to use the time to care for themselves, a family member, or those whose close relationship is the equivalent of a family relationship. In the health impact assessment, researchers found consistent evidence that the law would result in more workers taking needed leave from work to recover from illness, receive preventive care, and care for ill dependents and that it would reduce transmission of influenza in the community, foodborne disease in restaurants, and gastrointestinal infections in health care facilities.⁶⁹ They also found sufficient evidence that it would have a strong impact in guarding against workers' loss of income. The authors concluded that "the best available public health evidence demonstrates that the Healthy Families Act of 2009 would have significant and beneficial public health impacts."⁶⁹ A 2010 survey of San Francisco employees conducted years after the city's paid sick leave law went into effect also showed evidence of public health benefits; researchers reported that parents with paid sick days were 20% less likely than those without to send a child with a contagious illness to school.⁷⁰

Recommendations for family and medical leave: In the 20 years since the federal Family and Medical Leave Act became law, it has been used more than 100 million times by working men and women to care for an ailing loved one.^{71,72} It has significant limitations, however, including its exclusion of 40% of the workforce because they are employed by small firms. Furthermore, many workers cannot afford to take unpaid leave. If not replaced by a more comprehensive policy, the FMLA should be expanded and enhanced. It should include provisions for paid leave for family- or medical-related situations and cover a larger share of the US workforce. "Family" definitions should be expanded to cover additional relatives—including siblings, adult children, grandparents and grandchildren, and parents-in-law—as well as domestic partners, and the law should ensure that same-sex couples unable to marry legally can care for relatives who would be considered stepchildren or parents-in-law if the couple were married. The family and medical leave laws adopted by most other industrialized countries can serve as models for the United States.

One solution to the FMLA's shortcomings could be the establishment of a family and medical leave insurance system. A nationwide system could use small paycheck contributions from employees and employers to create a self-sustaining fund that would replace a portion of workers' wages while they are on leave. Leave could be used

for an employee's own serious health issues or for an employee to care for a new child or for a family member (or person with a familial-type relationship) with a serious health issue.⁷³

The paid leave laws described in this section use gender-neutral language when referring to parents caring for children, and they specify that "children" include birth, adopted, and foster children. Future laws should do so as well.

Opposing Arguments/Evidence

The major employer and industry trade associations are likely to oppose proposals mandating that businesses provide family and/or sick leave to employees. When the 1993 Family and Medical Leave Act was debated, these groups argued that the costs to employers would be significant and the impact on the US economy and job growth would be stifling.⁷⁴ Since the FMLA's enactment, concerns have been expressed about employees abusing the law by taking leave for reasons other than non-serious illnesses. Opposition by business groups to California's paid family leave law prior to its enactment in 2002 claimed that it would result in an "unfair burden," competitive disadvantage, and a "slippery slope towards the Nanny State."⁷⁵

More recently, opponents—generally business groups—have echoed concerns about the costs of paid sick days to business owners and warned that businesses would be discouraged from locating within certain city or state boundaries.⁷⁵⁻⁷⁹ An analysis by a national small business trade association on the economic impact of a national, mandatory paid sick leave requirement for employers with 15 or more employees estimated potential job losses, lost production, and declines in US gross domestic product.⁸⁰ The analysis, however, failed to assess the potential economic gains, both quantitative and qualitative, of paid sick leave policies. These benefits include infection control, higher earnings, reduced employee turnover and absenteeism, and health care cost savings.⁸¹

Not all small-business groups oppose paid sick leave; in fact, some have voiced support for paid leave laws.⁸²⁻⁸⁴ One group supporting passage of Portland's law noted that "[a] minimum standard for earning sick days levels the playing field for employers who already provide this benefit."⁸⁵ Providing paid leave can also improve employee retention, which reduces businesses' hiring and training costs.⁸⁶ The American Sustainable Business Council, the Main Street Alliance, and the Social Venture Network have launched the "Better Workplaces, Better Businesses" website to collect resources and a national listing of businesses and organizations voicing support for paid leave policies.⁸⁷

Concerns about employee abuse and negative impacts on businesses have not been borne out by research.⁸⁶ The Department of Labor found that 99% of surveyed employees who took FMLA leave for medical conditions reported doing so for a condition requiring a doctor's care, and 67% reported that they or their family member were in a hospital overnight.⁸⁸

Economic impact: Providing paid sick leave and family leave will increase employee compensation costs for employers, but the cost per worker is modest. A cost-benefit analysis of the paid sick leave law in Connecticut reported an average weekly cost per worker of \$6.87, or 19 cents per hour.⁸³ More importantly, the average benefit to firms, such as increased productivity and reduced turnover, was estimated at \$12.32 per worker.^{89,90} After implementation of a paid family leave policy in California, 89% of employers reported either positive or no noticeable effects on productivity, and more than 90% reported positive or no effects on profitability.⁸⁶

Interviews with 26 San Francisco employers conducted in 2008, approximately 9 months after the city's paid sick leave law went into effect, revealed that most experienced minimal to moderate effects on their overall business and bottom line.⁹¹ A 2010 survey of 727 San Francisco employers and 1,194 employees showed that the typical worker had used only 3 paid sick days during the past year, well below the maximum of 5 or 9 days, and 6 of 7 employers reported no negative impacts on profitability.⁷⁰ The Drum Major Institute used data from the California Employment Development Department to investigate whether warnings of job loss after implementation of San Francisco's paid leave law were borne out; to the contrary, the analysis showed that in the 3 years following the law's implementation, both total employment and the number of businesses grew more quickly in San Francisco than in the surrounding 5 counties.⁹²

Alternative Strategies

In the absence of a national law ensuring paid sick and family leave to all workers, alternatives have addressed subsets of workers. Many employers offer paid sick leave as an employment benefit. The state of Connecticut and the cities of Portland, Seattle, and the District of Columbia require—and Jersey City and New York City will soon require—many but not all employers to provide paid sick leave,^{61,62,65,67} and the city of San Francisco requires it of all employers.⁶⁰ Philadelphia requires employers who contract with or receive funds from the city to offer paid sick days to employees working on city-funded contracts or projects.^{93,94} The Philadelphia City Council passed paid sick leave legislation in 2011 and 2013, but the mayor vetoed both bills.^{76,95}

Paid sick leave legislation has been introduced or on the ballot, but not passed, in Arizona, Colorado, Hawaii, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, New York, North Carolina, Pennsylvania, and Vermont.⁹⁶ In 2008, voters in Milwaukee, WI, approved a ballot measure requiring employers to offer paid sick leave, but before it could be implemented the state legislature passed a law that prohibits local authorities from enacting paid leave laws.⁹⁷

California, Hawaii, Rhode Island, New York, New Jersey, and Puerto Rico have existing State Disability Insurance (SDI) programs that can provide infrastructure for paid sick leave or family leave.⁹⁸ SDI is generally funded by payroll deductions from employees and provides partial wage replacement for individuals unable to work because of a pregnancy or a non-work-related disability. With a law passed in 2002, California established a paid family leave program as a component of the state's disability insurance program.⁹⁹ In 2008, New Jersey passed a law creating the Family Leave Insurance Program.¹⁰⁰ In 2013, Rhode Island adopted legislation to establish a temporary caregiver insurance program as part of its temporary disability insurance program.¹⁰¹ All 3 states' programs are funded by worker payroll contributions and provide benefits equivalent to a portion of workers' salaries for up to 4 weeks (in Rhode Island) or 6 weeks (in California and New Jersey) each year for employees who miss work to care for new children or seriously ill family members, including domestic partners.⁹⁹⁻¹⁰¹

City- and state-level alternatives are worthwhile in the absence of federal requirements guaranteeing paid sick and family leave for all employees, but as long as a significant share of the population is not covered, disparities will persist.

Action Steps

APHA urges the US Congress to:

- Amend the Family and Medical Leave Act to apply to more employers than it currently does, working toward the goal of applying it to all employers; to expand the definition of family members to include households with same-sex couples and reflect a broader range of caregiver relationships; and to apply to part-time and recently hired workers.
- Pass a federal law, modeled on San Francisco's, requiring all employers to allow employees to accrue paid sick leave and use it to care for themselves, a family member, or a designated person with a familial-type relationship. The Healthy Families Act, which APHA already supports, would represent a major step forward.
- Pass legislation making paid medical and family-caregiving leave available to all workers regardless of employer size or sector. State insurance systems funded by worker payroll contributions, such as those already in use in California and New Jersey, could serve as models.

In the absence of federal legislation that fully addresses the problem of inadequate paid sick and family leave, APHA urges state and local governments that do not already have paid sick and family leave policies to:

- Adopt laws, ordinances, or policies requiring employers to provide paid leave for employees who are new parents and to provide paid sick leave to employees to care for themselves, a family member, or a designated person with a familial-type relationship.
- Support efforts to advance government-administered family and medical leave insurance. Governments can use San Francisco's paid sick leave law and California's family and medical leave system as models in addition to using materials from the National Council of State Legislatures.
- Adopt laws and policies that require contractors hired by a government entity to provide paid sick leave to their employees; Philadelphia's law can serve as a model.

APHA urges individual employers and business trade associations to:

- Establish policies for themselves or their members to allow employees to accrue paid sick leave and use it to care for themselves, a family member, or a designated person with a familial-type relationship.

APHA urges individual consumers and consumer advocacy groups to:

- Encourage consumers to use resources that provide information on the paid leave policies of restaurants and other businesses and patronize businesses that provide paid sick leave to their employees.^{90,91}

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